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NO. 83-6147

In The

SUPREME COURT OF THE UNITED STATES

October Term 1983

ESTATE OF
WILLIS CORNELIOUS,
Deceased.

TRUDY ANN HALL,
Appellant,
v.
HETTIE TAYLOR,
Respondent.

ON APPEAL FROM

THE SUPREME COURT OF THE STATE OF CALIFORNIA

MOTION TO DISMISS OR AFFIRM

HETTIE TAYLOR, the Appellee, moves the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of the State of California, on the grounds that the federal questions presented are so insubstantial as not to require further argument, and on the additional grounds that the prior judgment rests on an adequate nonfederal basis.

OPINIONS BELOW

The opinion of the California Supreme Court is officially reported at 35 Cal 3d 461; the opinion the California Court of Appeal is officially reported at 133 Cal. App. 3d 684; the trial court decision is not officially reported.

QUESTIONS PRESENTED

The constitutional question posed by Appellant on appeal is best stated as follows:

> Did the application of the conclusive presumption set forth in California Evidence Code §621(a) to deny Appellant priority to letters of administration pursuant to California Probate Code §§422 and 423 constitute a denial of due process as applied against the Appellant in the trial court?

STATUTES INVOLVED

California Evidence Code §621(a) provides:

> "Except as provided in subdivision (b), the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

Section 1 of the Fourteenth Amendment, United States Constitution, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF CASE

This action arises out of a probate proceeding involving the priority of opposing parties to administer the estate of a decedent pursuant to California Probate Code §§422 and 423.

The decedent, WILLIS CORNELIOUS, died on July 24, 1980, a resident of Imperial County, California. (CT 42:16-17) On October 29, 1980, HETTIE TAYLOR, the Appellee herein and the nominee of the decedent's two sisters (who resided in the State of Arkansas) filed a petition in the Superior Court to be appointed administratrix of the decedent's estate. (CT 42:21-26) On November 6, 1980, the Appellant, TRUDY ANN HALL, daughter of ARZINA FULLER, filed a petition in the same Superior Court, seeking to be appointed administratrix of the decedent's estate. (CT 42:28; 43:1-3; 44:4-6) In her petition, the Appellant, TRUDY ANN HALL, alleged that she was the daughter of the decedent, WILLIS CORNELIOUS. (CT 43:1-3)

The hearing on the petition of MS. HALL and MS. TAYLOR was held on December 19, 1980, and at said hearing the following facts were established through the testimony of ARZINA FULLER. (CT 43:16-18):

(a) ARZINA FULLER is the mother of the Appellant. (CT 44:4-6)

(b) ARZINA FULLER was married to DAVID FULLER in 1933, and said marriage was in existence as a continuing relationship from that date through the time of trial. (CT 43:20-22, 44:4-6)

(c) At the time the Appellant was conceived, her mother, ARZINA FULLER, and DAVID FULLER, were cohabiting as husband and wife. (CT 44:1-6; RT 4:23-26, 5:17-26, 6:1-4)

(d) The original certificate of live birth for the Appellant, TRUDY ANN HALL (FULLER) dated March 16, 1953, and signed by the Appellant's mother, ARZINA FULLER, names DAVID FULLER as the Appellant's father. (CT 44:8-11; RT 9:3-23)

In addition, pursuant to an offer of proof by Appellant's counsel, the additional facts referenced in Appellant's "Jurisdictional Statement" were accepted as proven by the trial court solely for the limited purpose of ruling on the Appellant's Motion for Judgment based on California Evidence Code §621(a).

Pursuant to the conclusive presumption of paternity set forth in California Evidence Code §621(a), the trial court concluded that Appellant was the child of ARZINA FULLER and DAVID FULLER, and accordingly held that:

(a) The petitioner, TRUDY ANN HALL, was not the daughter of the decedent;

(b) The "parent and child relationship" as required for Appellant's priority of right to Letters of Administration pursuant to the California probate Code §§422 and 423 did not exist; and

(c) The petitioner, HETTIE TAYLOR, was entitled to Letters of Administration in the Estate of WILLIS CORNELIOUS, as the nominee of the decedent's sisters. (CT 46:20-23).

The Court further ruled that the presumption of legitimacy as set forth in California Evidence Code §621(a) did not violate constitutional guarantees of due process in that the State of California has a strong social interest in the application of the conclusive presumption of paternity set forth in California Evidence Code §621(a) in order to promote:

(a) Marriage and not impugn the family unit, and

(b) The speed and efficiency of judicial inquiries in these circumstances, and

(c) The stability of titles to property and rights of inheritance.

The trial court further determined that the application of the conclusive presumption was not unreasonable, arbitrary or capricious, and there was a rational connection between the ultimate fact presumed and the facts actually proved. (CT 46:6-11, 11-14)

On appeal, the California Court of Appeal affirmed the decision of the trial court, with Justice Work dissenting. The majority opinion written by Justice Cazarez, and concurred in by acting Presiding Justice Stansforth, set forth in detail the state interests which supported the application of the presumption, including (a) the stability of titles to property and rights of inheritance, (b) the speed and efficiency of judicial inquiry, and (c) the sanctity of the family. As was stated in the Court of Appeals opinion (see Appendix B, p. 9 of Appellant's Jurisdictional Statement):

"The facts here show the familial relationship HALL had with DAVID FULLER was much more palpable than the biological relationship she had with CORNELIOUS. HALL was raised and supported by DAVID. Her birth certificate names DAVID as her father. DAVID and ARZINA FULLER were married over 48 years without separation. DAVID was never told he was not HALL'S father, nor was he told of this proceeding for fear of ruining the marriage. HALL was aware of CORNELIOUS' status for 12 years (9 years during which she was of majority). Now, after 27 years as the daughter of DAVID FULLER, HALL claims the paternity of another man."

Appellant petitioned for a hearing before the California Supreme Court, and a hearing was granted. In her petition, and in oral argument before the court, Appellant reiterated the argument she raised in each of the lower courts. After oral argument and prior to deciding the case, the court requested counsel to respond to additional issues under California probate statutes by letter brief. Appellant's response is appended to the Appellant's "Jurisdictional Statement" as Appendix E. Appellee's response to the California Supreme Court is appended hereto as Appendix A.

In its opinion, the California Supreme Court addressed the constitutional questions, and with the Chief Justice dissenting, decided against Appellant and affirmed the trial court. In that decision, the California Supreme Court went into great detail in reviewing the reasoning and rationale of its decision, and in discussing the relevant state interests.

ARGUMENT

A. Opinion of California Supreme Court is in Accord with the Constitutional Requirements of Vlandis vs, Kline.

The Case of Vlandis vs. Kline (1973) 412 U.S. 441, 935 S. Ct. 2230, is cited by the Appellant for the proposition that the Due Process Clause of the Fourteenth Amendment to the United States Constitution is violated when a conclusive (irrebuttable) presumption:

(a) Is not necessarily or universally true in fact, and

(b) When the state has reasonable alternative means of making the crucial determination.

To that limited extent, the Appellant's statement of the Vlandis case is correct. However, Appellant's arguments and analysis are incorrect as related to the case at hand.

(1) Must the Presumption Necessarily or Universally be True in Fact?

The realization that establishment of certain preliminary facts may give rise to a "presumption" of additional facts should put us on notice that a "presumption", because of its very nature, will never be universally true in fact. Further, the determination that a presumed fact is not correct does not in itself make the application of that "presumption" a violation of "due process". The fact that a "generally valid rule" or "presumption" may have some rough edges does not make its application unconstitutional under the Fourteenth Amendment. (Vlandis vs. Kline (1973) 412 U.S. 441, 465, 466, Dissenting Opinion.)

Given a certain relationship between husband and wife, the State of California may impose the "legal consequences" of fatherhood on a husband even though he is not the "biological" father of the child. In certain situations, overriding social policies mandate that the "biological" impossibility of fatherhood be disregarded. The father and child relationship is a "legal relationship" incident to which the law confers or imposes rights, privileges, duties, and obligations, including certain rights of inheritance. California Evidence Code §621(a) provides that given a certain factual situation (preliminary fact situation), the State of California shall impose the "legal consequences" of paternity on a married man. This "legal relationship" is imposed to further certain legitimate and substantial state interests.

(a) Irrelevance of "Biological Paternity"

Appellant argues that the application of the conclusive presumption against the Appellant in this case is a denial of "due process" because she, if given the opportunity, can prove that DAVID FULLER is not her biological father. But "biological paternity" has never been required under the California statute. The holding of a long line of California cases is best summarized by the headnotes in People vs. Thompson (1979) 89 Cal. App. 3d 193, in which the conclusive presumption of Evidence Code §621(a) was used to prove paternity in prosecuting a defendant for willful failure to support his son under the California Penal Code.

> "While paternity is an essential element of the crime, and proof beyond a reasonable doubt of every element of a criminal charge is constitutionally required, proof of biologic parenthood is not an essential element of proof of guilt under Penal Code §270, as the determinant factor is whether the legal relationship of father and child exists."

The application of the conclusive presumption of paternity herein is not unconstitutional just because "non-paternity" may be proved.

(2) Does the State Have Reasonable Alternative Means of Making the Crucial Determination?

In Vlandis vs. Kline the court reviewed the reasonable alternative methods available to the state to make the "crucial determination" of residency. In the case at hand, the "crucial determination" is whether there are alternative means to establish paternity, not (as Appellant has misstated) whether there are alternative means to establish non-paternity.

The same erroneous argument by Appellant was previously rejected by the California Court of Appeals in this matter:

> "The 'crucial question' according to Brown, supra (80 Cal. App. 3d 297) is not whether there are alternative means to establish the presumed father's non-paternity, but whether there are reasonable means to establish the alleged biological father's paternity (id. at p. 306). Brown thus reaffirms Kusior vs. Silver 54 C2d 603, holding blood test evidence cannot be used to controvert a conclusive presumption of paternity. The reasoning is simple: Although in some cases blood factors may operate to eliminate a certain man as the father, they do not designate a specific individual as the biological father. The purpose underlying the statutory presumption of conclusiveness does not imply a legislative doubt as to the scientific reliability of blood tests, but rather the purpose is to determine the legal father and to achieve certain social policies upholding the integrity of the family (Kusior vs. Silver, supra, 54 C2d 603, 619).

In correctly applying the second portion of the analysis in Vlandis vs. Kline to this case, we would inquire as follows: Does the State have a reasonable alternative method of determining paternity for children conceived during the marital cohabitation? The answer to this question is clearly "no".

Therefore, like other types of blood tests, the sickle cell anemia test proposed by the Appellant should not be admissible to refute a conclusive presumption of paternity.

(3) Is a State Interest or Public Policy Served or Supported by the Application of the Presumption Against Appellant in this Matter?

Appellant, contrary to the evidence and the facts in this case, argues that no state interest or public policy is served or supported by the application of the §621(a) presumption against the Appellant. Each court in these proceedings has reviewed in detail the applicable state interests or public policies which are furthered by the application of the presumption. Appellant's denials of any state interest are in direct conflict with the facts as established by Appellant's own witness. ARZINA FULLER clearly testified to the familial relationships in a long term marriage of over 48 years. Appellant argues that the subsequent death of the Appellant's presumed father (DAVID FULLER) somehow retroactively terminates the family relationship in existence at the time of trial. The California courts reviewed in detail the state interests which supported the application of the presumption, which included protecting (a) the sanctity of the family, (b) the speed and efficiency of judicial inquiry, and (c) the stability of titles of property and rights of inheritance. These important state interests have long been recognized by the U.S. Supreme Court as permissible

state interests. (Lalli vs. Lalli (1978) 439 U.S. 259, 99 S Ct. 1518, Trimble vs. Gordon (1977) 430 U.S. 762, 97 S Ct. 1459).

The opinion of the California Supreme Court stands in full accord with the precepts of the Vlandis vs. Kline opinion. The application of the presumption under California Evidence Code §621(a) clearly withstands constitutional scrutiny in the case now before the court.

B. Constitutionally Protected Parental Rights

(1) Lack of "Essential" Parental Rights

Appellant cites Stantosky vs. Kramer (1982) ___ U.S. ___, 102 S. Ct. 1388, Quillon vs. Walcott (1978) 434 U.S. 246, 98 S. Ct. 549, Stanley vs. Illinois (1972) 405 U.S. 645, 92 S. Ct. 1208, and In Re Lisa R. (1975) 13 Cal. 3d 636, as cases involving similar issues as the case at bar. Said cases are in no way similar or binding in this matter. Stantosky involved parental rights termination proceedings between parent and child. Quillon involved the petition by the step-father of an illegitimate child for adoption over the objections of the natural father. Stanley involved the rights of an unwed father to custody of his children on the natural mother's death. In Re Lisa R. involved attempts by an individual father to prove paternity of an orphaned child. These cases all involved attempts by the state to deny the parent or parents the opportunity to establish or re-establish a family relationship or "essential" parental rights. As was stated in Stanley vs. Illinois (1972) 405 U.S. 645, 651, these cases involved "rights far more precious ... than property rights". Appellant's attempts to bring herself within the purview of these cases is lacking. There are no "essential" parental rights being asserted for the protection of a "viable" family relationship.

(2) Additional Presumption of Parent-Child Relationship Between Appellant and DAVID FULLER.

Appellant further claims the existence of a rebuttable presumption of MR. CORNELIOUS' paternity of the Appellant under California Civil Code §7004(a)(4). (This section relates to acknowledgement of a child). As pointed out in the Appellee's letter brief of June 30, 1984 to the California Supreme Court (a copy of which is appended hereto as Appendix A), there is, no such surviving presumption because of the conflict with another rebuttable presumption of DAVID FULLER's paternity of Appellant under California Civil Code §74004(a)(1). Any conflicts in the presumptions arising under §7004(a) are resolved by the application of §7004(b) which provides in part:

> "(b) .... If two or more presumptions arise under this section which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls ...".

Clearly, the presumption of Appellant's paternity by DAVID FULLER based on his marriage to ARZINA FULLER, the Appellant's mother, and the birth of the Appellant during said marriage (Civil Code §7004(a)(1)) is founded on the weightier considerations of policy and logic, and would therefore control.

C. Appellant's Claim of a Constitutionally Protected Right of Inheritance.

Appellant claims that she has a constitutionally protected property right involving the right to "inherit" from MR. CORNELIOUS' estate. The California statutes involved the rights of the parties as set forth in the California Probate Code, and the application of

those sections is traditionally a state as opposed to federal right. It is a well recognized rule that the orderly disposition at death (probate procedures) is a matter particularly within the competence of individual states, and as such, the federal courts should give substantial deference to the state's statutory scheme of inheritance. (Trimble vs. Gordon (1977) 430 U.S. 762, 97 S Ct. 1459, Labine vs. Vincent (1971) 401 U.S. 532, 91 S Ct. 1017). The fact that the logical interpretation of those state statutes does not include the Appellant within the statutory scheme, is not a violation of her rights under the 14th Amendment to the U.S. Constitution. As such, there are adequate non-federal grounds on which to support this decision.

CONCLUSION

For the reasons stated herein, we respectfully submit that this appeal should be either dismissed or affirmed.

Respectfully submitted,

Clifford Cameron Caldwell

CLIFFORD C. CALDWELL
Counsel for Appellee

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
:ss
COUNTY OF IMPERIAL)

I am a resident of, and employed in, the aforesaid County. I am over the age of eighteen (18) years, not a party to that certain legal action No. 83-6147 entitled Estate of WILLIS CORNELIOUS, deceased, TRUDY ANN HALL vs. HETTIE TAYLOR ("action"), and my business address is 444 South Eighth Street, El Centro, California 92243.

On April 12, 1984, I served the following documents in the action on the counsel of record for Appellant, Trudy Ann Hall: (1) MOTION TO DISMISS OR AFFIRM, with APPENDICES, said service having been made by placing true and correct copies of said documents, and each of them, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at El Centro, California, addressed as follows:

LLOYD EDWARD TOOKS
2414 Kathleen Place
San Diego, California 92105

I certify and declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge.

Executed on April 12, 1984, at El Centro, California.

Clifford Cameron Caldwell
CLIFFORD CAMERON CALDWELL

NO. 83-6147

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In The

SUPREME COURT OF THE UNITED STATES

October Term 1983

ESTATE OF
WILLIS CORNELIOUS,
Deceased.

TRUDY ANN HALL,
Appellant,
v.
HETTIE TAYLOR,
Respondent.

APPENDICES

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OUR FILE NO.

June 30, 1983

SUPREME COURT
FILED
JUL 1 - 1983
LAURENCE P. GILL, Clerk

Clerk of the Supreme Court
State of California
3580 Wilshire Blvd., Room 213
Los Angeles, CA 90010

Re: L.A. 31631 - Estate of Cornelious

To the Honorable Rose E. Bird, Chief Justice,
and to the Honorable Associate Justices of
the Supreme Court of the State of California:

The court has requested counsel to address the following issues in this case while assuming, for the sake of argument, that Section 621 of the Evidence Code violates due process:

Issues

1. Is the Appellant nevertheless barred from qualifying for letters of administration because of the provisions of subdivisions (a) and (d) of Section 255 and subdivision (b)(1) of Section 422 of the Probate Code?

2. Is the Appellant nevertheless barred from qualifying for letters of administration because she did not file an action "within a reasonable time after obtaining knowledge of relevant facts", as required by subdivision (a)(2) of Section 7006 of the Civil Code?

A. Appellant's Failure to Qualify For Letters Pursuant to Probate Code §§255(a), (d) and §422(b)(1)

In order to qualify for priority of right to letters, the Appellant must be entitled to succeed to all or part of the Estate of Willis Cornelious pursuant to sub-

APPENDIX "A"
A-1

division (b)(1) of Section 422 of the Probate Code (see Exhibit "A" attached). In order to succeed to the Estate of Willis Cornelious, the Appellant must in turn establish her rights of succession pursuant to Probate Code Section 255, which defines the necessary "parent-child" relationship that is required for purposes of succession.

1. Section 255 Requires that for Purposes of Succession a Parent and Child Relationship which is not presumed must be established prior to the death of the decedent. Appellant, Trudy Ann Hall, is barred from inheriting in Willis Cornelious's estate by Probate Code, Section 255 which provides in pertinent part:

> "(a) The rights of succession by a child, as set forth in this division, are dependant upon the existence, prior to the death of the decedent, of a parent and child relationship between such child and the decedent."
>
> * * * * *
>
> "(d) For purposes of this division, a parent and child relationship exists where such relationship is (1) presumed and not rebutted, pursuant to, or (2) established pursuant to, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code." (emphasis added)

In order to understand Probate Code Section 255, it is necessary to read said provision in conjunction with Civil Code Section 7004 (see Exhibit "B" and "C" attached). Read together, these provisions define when the "parent and child" relationship exists.

The "parent-child" relationship exists where such relationship is presumed and not rebutted or where such relationship is established pursuant to Civil Code Section 7004. The Appellant must prove either the presumption of a "parent-child" relationship prior to the death of the decedent (not our case) or establish the "parent-child" relationship in a court proceeding prior to the death of the decedent (not our case).

Presumption of Parent-Child Relationship

Under the provisions of Section 7004, David Fuller (not the decedent) is Trudy Ann Hall's presumed father, because "he and the child's natural mother are ..... married to each other and the child is born during the marriage..." Civil Code Section 7004(a)(1).

Conflicting Presumptions Under Section 7004

The best Appellant could hope to argue is that somehow the decedent "received the Appellant into his home and openly held out the Appellant as his natural child". Civil Code Section 7004(a)(4). This would create a conflict in the presumptions of Section 7004(a)(1) and 7004(a)(4). However this is of no help to the Appellant, since Section 7004(b) provides in part:

> "(b) .... If two or more presumptions arise under this section which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man."

Clearly the presumption of paternity based on marriage of the parties and the birth during said marriage (Civil Code §7004(a)(1) is founded on the weightier considerations

of policy and logic and would therefore control. This is even more obvious given the weight previously attributed to Evidence Code §621 which section requires underlying facts of a similar nature.

Necessity of Court Action Prior to Death

In addition, Civil Code Section 7006(a)(2) provides the method in which one can determine the non-existence of the father and children relationship presumed under Civil Code §7004(a)(1). It is accomplished only by bringing a action to rebut the presumption. Appellant has not done this. Section 7006(a)(2) states in pertinent part:

> "After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party."

It is clear that David Fuller is the Appellant's presumed father as established by Civil Code §7004(a)(1), and the only way the parent-child relationship between Appellant and the decedent, Willis Cornelious, could come into existence would be through its establishment in a court action pursuant to Civil Code §7006(a)(2) (see Exhibit "D" attached).

Since no court action was brought to establish non-paternity or paternity prior to the death of Willis Cornelious, the Appellant, Trudy Ann Hall, is barred by Probate Code Section 255 from relying on a court declaration of paternity after Willis Cornelious's death to make any claim as his heir.

Probate Code Section 255 clearly provides that a child's right to inherit from a parent depends on the existence of the parent-child relationship prior to the death of

the decedent, and that such a relationship "exists" where such relationship is presumed (not the case here) or is established in a court proceeding under the Uniform Parentage Act (Civil Code §7000 et seq.).

In other words, since paternity was not established by a court action prior to the death of Willis Cornelious, a parent-child relationship (as defined in PC §255) did not exist prior to his death, and the Appellant has no right of succession as the purported child of the decedent. This view is supported in 7 Pacific L. J. 416, Selected 1975 California Legislation, which states:

> "For purposes of succession under this Section (§255), the existence of a parent and child relationship must have been established prior to the death of the decedent...."

Legislative History of Probate Code Section 255

The meaning of Section 255 and its qualifying language that the parent-child relationship must exist "prior to the death of the decedent" is clear on the face of the statute.

The phrase "prior to the death of the decedent" was not simply an oversight. The original law as it was proposed did not require the establishment of the parent-child relationship prior to the decedent's death. (See S.B. 347, as introduced February 4, 1975, which is attached hereto in pertinent part as Exhibit "E"). The bill was subsequently amended in conference on September 12, 1975, to add the phrase "prior to the death of the decedent". (See S.B. 347, as amended on September 12, 1975, which is attached hereto in pertinent part as Exhibit "F").

The Enrolled Bill Memorandum explaining the effect of S.B. 347 and subsequently sent to the governor further confirms that Section 255 was designed to bar heirship claims where the parent-child relationship was not established prior to death. The memorandum, dated October 1, 1975, and attached hereto as Exhibit "G", states as follows:

> "The bill would grant fathers and children who have an established parent and child relationship (prior to death) full reciprocal inheritance rights without regard to marital status of the father and mother."

It is obvious that the language "prior to the death of the decedent" was added for the specific purpose of preventing heirship claims such as is raised in this case. Therefore, pursuant to Probate Code Section 255(d), a parent-child relationship "exists" only when it is presumed or established by court action "prior to the death of the decedent" as provided in the Uniform Parentage Act (Civil Code Sections 7000, et seq.). Since there are no cases on point interpreting Probate Code Section 255, we must look to the clear language of the statute and the clear legislative intent behind its enactment as has been previously discussed.

B. Appellant's Failure to Qualify for Letters Pursuant to Civil Code Section 7006(a)(2).

Appellant is further barred by Civil Code Section 7006(a)(2) from attempting to establish her heirship in order to qualify for letters in this case.

As previously mentioned, David Fuller is the legally presumed father of Appellant, Trudy Ann Hall, under Civil Code Section 7004(a)(1), because at the time of Appellant's birth, he was married to Arzina Fuller, Appellant's mother.

In order to have Willis Cornelious adjudicated her father for purposes of inheritance pursuant to Probate Code §255, Trudy Ann Hall would have to comply with Civil Code Section 7006(a)(2), which provides that a child or the child's natural mother may bring an action:

> "(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (1), (2) or (3) of subdivision (a) of Section 7004 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. (emphasis added).

Appellant's Failure to Bring an Action Within a Reasonable Time

Before Appellant could have the decedent, Willis Cornelious, declared to be her father for purposes of Probate Code Section 255, or for any other purpose, she must first bring an action to declare that no father-child relationship exists between herself and David Fuller, her presumed father. A petition for letters of administration in the Estate of Willis Cornelious does not constitute such an action. However, even if it were such an action, it would be barred in this case because it was not "brought within a reasonable time after obtaining knowledge of relevant facts". Civil Code Section 7006(a)(2).

Arzina Fuller, Appellant's mother, testified at trial that she told Trudy Ann Hall when she was fifteen (15) years old that Willis Cornelious was her father, and that Trudy Ann Hall's relationship and association with the decedent, Willis Cornelious, allegedly began at approximately the same

time. (Testimony of Arzina Fuller at page 4, lines 3-10, of Reporter's Transcript on Appeal, and the trial Court's findings of fact and conclusions of law on page 45 of the Clerk's Transcript on Appeal, lines 1-4).

At the time Trudy Ann Hall filed for letters of administration in this matter, she was twenty-seven (27) years old. (Reporter's Transcript 56) Her mother, Arzina Fuller, could have brought an action twenty-seven (27) years prior to that to declare the non-existence of a father-child relationship between Trudy Ann Hall and David Fuller and to establish such a relationship between Trudy Ann Hall and the decedent, Willis Cornelious. Trudy Ann Hall could have brought such an action at any time after she reached age eighteen (18), which event occurred more than nine and one-half (9 1/2) years prior to the filing of her petition for letters in this case.

Instead, Arzina Fuller and Trudy Ann Hall waited until after the death of Willis Cornelious to bring this action, when the decedent would be unavailable to admit or deny paternity. David Fuller, the presumed father, has died and is also unavailable to admit or deny paternity. When the parties have knowledge of the relevant facts, as in this case, it is certainly unreasonable to allow them to wait twenty-seven (27) years, or even nine (9) years, to bring such an action.

The delay in this situation cannot by any stretch of the imagination be called reasonable. To allow an action to declare the <u>non-existence</u> of a parent-child relationship in order to establish the existence of another such relationship at this late date, when the alleged relevant facts have been known all along, and after all other relevant witnesses have died, would only present enormous problems of proof that could easily have been avoided by a more timely action. There are no extraordinary circumstances which would justify the long delay involved in this case.

Legislative Intent

An idea as to what the legislature considers a "reasonable time" to bring an action pursuant to Civil Code Section 7006(a)(2), is provided by a Digest of the Senate Committee on Judiciary on SB 347. The bill originally set forth a five (5) year statute of limitations for such actions. (See Exhibit "H" attached) While the legislature chose not to enact a hard and fast time period, this certainly indicates time period they originally had in mind. There are no extraordinary circumstances in this case which would justify the delays involved.

Conclusion

Probate Code Section 255 bars Appellant, Trudy Ann Hall from establishing her right to letters of administration herein, in that she is unable to establish the necessary existence of a parent-child relationship between her and the decedent prior to the death of the decedent.

Further, Civil Code Section 7006(a)(2) constitutes a second bar to Appellant's action herein. Appellant did not bring an action to declare the non-existence of a father-child relationship between herself and David Fuller, her presumed father, within a reasonable time after obtaining knowledge of relevant facts. It would be unreasonable to allow the Appellant to bring such an action at this late date.

Thus, Appellant is precluded from establishing her right to letters of administration by both Probate Code Section 255 and Civil Code Section 7006(a)(2), and the decision of the lower courts in favor of the respondent, Hettie Taylor, should be affirmed.

Dated: June 30, 1983.

Respectfully submitted,
PINNEY & CALDWELL
A Professional Corporation

By: C C. CALDWELL
CLIFFORD C. CALDWELL
Attorneys for Respondent

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013a and 2015.5)

I, the undersigned, say: I am over the age of 18 years, and I am employed in the County of Imperial, California, in which county the withinmentioned mailing occurred. I am not a party to the subject action. My business is 444 South Eighth Street, El Centro, California 92243. I served the Letter Brief, of which a true and correct copy of the document filed in the action is affixed, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Lloyd Tooks
2414 Kathleen Place
San Diego, CA 92105

Clerk of Superior Court
Imperial County
939 Main Street
El Centro, CA 92243

Court of Appeal
Fourth Appellate District
6010 State Building
1350 Front Street
San Diego, CA 92101

Each envelope was then sealed with the postage thereon fully prepaid, and deposited in the United States mail by me at San Diego, California, on June 30, 1983.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of June, 1983, at El Centro, California.

C. C. CALDWELL

§ 422. Order of priority of right to letters: Standing of relatives as dependents on succession

(a) Administration of the estate of a person dying intestate must be granted to one or more of the following persons, who are entitled to letters in the following order:

(1) The surviving spouse, or some competent person whom he or she may request to have appointed.

(2) The children.

(3) The grandchildren.

(4) The parents.

(5) The brothers and sisters.

(6) The next of kin entitled to share in the estate.

(7) The relatives of a previously deceased spouse, when such relatives are entitled to succeed to some portion of the estate.

(8) The public administrator.

(9) The creditors.

(10) Any person legally competent.

(b) A relative of the decedent who is entitled to priority under subdivision (a) is entitled to priority only if either of the following facts exist:

(1) The relative is entitled to succeed to all or part of the estate.

(2) The relative is a parent, grandparent, child, or grandchild of the decedent and either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

Amended Stats 1974 ch 511 § 2.

Amendments:

1974 Amendment: (1) Designated the former section to be subd (a)"; (2) deleted ", the relatives of the decedent being entitled to priority only when they are entitled to succeed to the estate or some portion thereof" after "order" in the introductory clause of subd (a); and (3) added subd (b).

Within Summary (5th ed) pp 5786, 5787, 5788, 5789, 5790, 5791, 5792.

Cal Jur 3d Decedents' Estates §§ 79, 150, 159, 172, 174, 175, 178, 180, 181, 183, 187, 188, 190, 224, 985, 1013, 1014, 1106, Diplomatic and Consular Officers § 1.

Highlights of 1974 California legislation affecting trusts and estates. (1975) 8 Rev Mills BJ No. 4, p. 27.

Review of Selected 1974 California Legislation. 6 Pacific LJ 150.

Propriety of court's appointment, as administrator of decedent's estate, of stranger rather than person having statutory preference. 84 ALR3d 707.

1. In General

Traditions and proposed legislative drafts may be helpful in interpreting a statute when its meaning is unclear, but they cannot override the unequivocal meaning of the words finally adopted by the Legislature. In determining the legislative intent, the courts give the words of the statute their usual and ordinary import. There is no room for interpretation of Prob. Code, § 420, which plainly states that a court may appoint an administrator with will annexed a competent person not otherwise entitled to appointment as a matter of priority on written request of a resident of the United States who takes more than 50 percent of the value of the estate under the will; the statute is not of the deceased spouse's death. Thus, the trial court erred in granting letters of administration to decedent's father, over the objections of the surviving spouse. However, the judgment was nevertheless affirmed where the surviving spouse had failed to timely file a counterpetition (Prob. Code, § 462). Lindsey Estate (1980) 108 CA3d 428, 166 Cal Rptr 511.

2. —Right to Appointment in Preference to Other Persons

Notice of a hearing involving a petition for letters of administration is jurisdictional. Thus, on appeal from a judgment granting letters of administration to decedent's father, decedent's surviving spouse was foreclosed from asserting that she was

EXHIBIT A

§ 255. Necessity of existence of parent and child relationship

(a) The rights of succession by a child, as set forth in this division, are dependent upon the existence, prior to the death of the decedent, of a parent and child relationship between such child and the decedent.

(b) The rights of succession by issue through a deceased child of a decedent, as set forth in this division, are dependent upon the existence, prior to the death of the deceased child, of a parent and child relationship between such issue and a deceased child and upon the existence prior to the death of the decedent or the deceased child of a parent and child relationship between such deceased child and the decedent.

(c) The rights of succession to a child's estate by a parent and all persons who would take an intestate share of the decedent's estate through such parent, as set forth in this division, are dependent upon the existence, prior to the death of the decedent, of a parent and child relationship between the parent and the decedent child.

(d) For purposes of this division, a parent and child relationship exists where such relationship is (1) presumed and not rebutted pursuant to, or (2) established pursuant to, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

Added Stats 1975 ch 1244 § 23.

Former § 255, similar to the present section, was amended by Stats 1975 ch 718 § 2 and repealed by Stats 1975 ch 1244 § 24.

Within Summary (8th ed) pp 4720, 4742, 5587, 5588, 5589, 5787.

Cal Forms—41:272.

1. In General

Prob. Code, § 255, providing that every illegitimate child is an heir of his mother and also of the person who, in writing signed in the presence of a competent witness, acknowledges himself to be the father, is not unconstitutional on equal protection grounds as discriminating between legitimate and illegitimate children and between the mother and father of illegitimate children. Ginochio Estate (1974) 43 CA3d 412, 117 Cal Rptr 565.

An Illinois intestate succession statute which allowed illegitimate children to inherit only from their mothers while legitimate children were allowed to inherit from both their mothers and their fathers violated the Equal Protection Clause. Trimble v Gordon (1977) 430 US 762, 52 L Ed 2d 31, 97 S Ct 1459.

2. Construction

While paternity is a precondition of legitimation by adoption under Civ. Code, § 230, and the judicial determination thereof is conclusive in such a proceeding, the establishment of paternity is neither a statutory requisite to obtain inheritance rights under Prob Code, § 255, nor can it serve as a substitute for the mandate of that statute requiring in clear and unequivocal terms that the father acknowledge "himself to be the father" in writing, signed in the presence of a competent witness. Therefore, the judicial determination of paternity cannot be equated with the public acknowledgment of the child under Prob Code, § 255, which by definition postulates a voluntary act on the part of the father. Ginochio Estate (1974) 43 CA3d 412, 117 Cal Rptr 565.

6. Acknowledgment

While paternity is a precondition of legitimation by adoption under Civ. Code, § 230, and the judicial determination thereof is conclusive in such a proceeding, the establishment of paternity is neither a statutory requisite to obtain inheritance rights under Prob Code, § 255, nor can it serve as a substitute for the mandate of that statute requiring in clear and unequivocal terms that the father acknowledge "himself to be the father" in writing.

EXHIBIT B

A-12

§ 7004. [Presumption of natural fatherhood]

(a) A man is presumed to be the natural father of a child if he meets the conditions as set forth in Section 621 of the Evidence Code or in any of the following subdivisions:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court.

(2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) With his consent, he is named as the child's father on the child's birth certificate, or

(ii) He is obligated to support the child under a written voluntary promise or by court order.

(4) He receives the child into his home and openly holds out the child as his natural child.

(b) Except as provided in Section 621 of the Evidence Code, a presumption under this section is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise under this section which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Added Stats 1975 ch 1244 § 11.

EXHIBIT C

A-13

§ 7006. [Actions with respect to existence of father and child relationship]

(a) A child, the child's natural mother, or a man presumed to be his father under paragraph (1), (2), or (3) of subdivision (a) of Section 7004, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (1), (2), or (3) of subdivision (a) of Section 7004.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (1), (2), or (3) of subdivision (a) of Section 7004 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under paragraph (4) of subdivision (a) of Section 7004.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7004 or whose presumed father is deceased may be brought by the child or personal representative of the child, the State Department of Social Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. The commencement of such an action shall suspend any pending proceeding in connection with the adoption of such child, including a proceeding pursuant to subdivision (b) of Section 7017, until a judgment in the action is final.

(d) Except as to cases coming within the provisions of Section 621 of the Evidence Code, a man not a presumed father may bring an action for the purpose of declaring that he is the natural father of a child having a presumed father under Section 7004, if the mother relinquishes for, consents to, or proposes to relinquish for or consent to, the adoption of the child. Such an action shall be brought within 30 days after the man is served as prescribed in subdivision (f) of Section 7017 with a notice that he is or could be the father of such child or the birth of the child, whichever is later. The commencement of such action shall suspend any pending proceeding in connection with the adoption of such child until a judgment in the action is final.

(e) Regardless of its terms, an agreement between an alleged or presumed father and the mother or child does not bar an action under this section.

(f) An action under this section may be brought before the birth of the child.

(g) The district attorney may also bring an action under this section in any case in which he believes that the interests of justice will be served thereby.

Added Stats 1975 ch 1244 § 11; Amended Stats 1976 ch 420 § 30, effective July 17, 1976, operative July 1, 1976, Stats 1979 ch 752 § 1.

Prior Law: Former § 231.

EXHIBIT D

Amendments

1976 Amendments: Substituted "State Department of Social Services" for "State Department of Health" in subd (c).

1979 Amendments: (1) Added the last sentence of subd (c); (2) added subd (d); and (3) redesignated former subds (d)-(f) as be subds (e)-(g).

SENATE BILL No. 347

Introduced by Senator Bellenson

S 7/13/5 February 4, 1975

all similar acts in Uniform Parentage Act, Uniform Status of Children Act, Uniform Act on Paternity, Uniform Illegitimacy Act, Uniform Legitimacy Act, Uniform Act on Blood Tests to Determine Paternity, Uniform Act on Status of Children of Divorced Parents, Uniform Act on Status of Children Born Out of Wedlock, Uniform Act on Status of Children of Void Marriages, Uniform Act on Status of Children of Annulled Marriages, Uniform Act on Status of Children of Dissolved Marriages, Uniform Act on Status of Children of Legally Separated Parents, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Incompetent, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Ill, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Retarded, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Disabled, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Handicapped, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Challenged, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Impaired, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Deficient, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Defective, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Ill, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Retarded, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Disabled, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Handicapped, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Challenged, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Impaired, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Deficient, Uniform Act on Status of Children of Parents Who Have Been Declared Mentally Defective

An act to amend Sections 197 and 224 of, and to add Part 7 (commencing with Section 7000) to Division 4 of, and to repeal Sections 195, 196a, 200, 215, 216, 230, 231, and 4453 of, the Civil Code, to amend Sections 605, 1310, 1311, 1312, 1313, 1315, and 1316 of, and to repeal Sections 621 and 661 of, the Evidence Code, to repeal Article 5 (commencing with Section 10440), Article 6 (commencing with Section 10450), and Article 6.5 (commencing with Section 10455), of Chapter 8 of Division 9 of the Health and Safety Code, and to amend Section 1403 of, to add Section 255 to, and to repeal Sections 255 and 256 of, the Probate Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 347, as introduced, Bellenson. Children.

Present law contains numerous distinctions as to the legal treatment of children deemed legitimate and those deemed illegitimate.

This bill eliminates the distinction between legitimate and illegitimate children and enacts the Uniform Parentage Act to provide a procedure to establish the parent-child relationship without regard to distinctions based on legitimacy. It also makes related changes and would be operative July 1, 1976.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 195 of the Civil Code is repealed.

~~195. The issue of a marriage which is void, invalid, adjudged a nullity, or dissolved by a judgment decreeing~~

EXHIBIT "E"

A-15

represent his mother and may inherit any part of the estate of the mother's kindred, either lineal or collateral.

SEC. 25. Section 255 is added to the Probate Code, to read:

255. (a) The rights of succession by a child, as set forth in this division, are dependent upon the existence of a parent and child relationship between such child and the decedent.

(b) The rights of succession by issue through a deceased child of a decedent, as set forth in this division, are dependent upon the existence of a parent and child relationship between such issue and a deceased child.

(c) The rights of succession to a child's estate by a parent and all persons who would take an intestate share of the decedent's estate through such parent, as set forth in this division, are dependent upon the existence, prior to the death of the decedent, of a parent and child relationship between the parent and the decedent child.

(d) For purposes of this division, a parent and child relationship exists where such relationship is (1) presumed and not rebutted pursuant to, or (2) established pursuant to, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code.

SEC. 26. Section 256 of the Probate Code is repealed.

256. The estate of an illegitimate child, who, having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, is succeeded to as if he had been born in lawful wedlock, if he has been legitimated by a subsequent marriage of his parents or adopted by his father as provided by the Civil Code; otherwise, it is succeeded to as if he had been born in lawful wedlock and had survived his father and all persons related to him only through his father.

SEC 27. Section 1403 of the Probate Code is amended to read:

1403. Either parent of a legitimate child living or likely to be born, may appoint a guardian of the person and estate, or person or estate of such child, by will or by deed, to take effect upon the death of the parent appointing, with the written consent of the other parent,

A-16

(Further Exhibits were omitted)

END OF DOCKET